

STATE OF MICHIGAN
COURT OF APPEALS

CONTINENTAL PRESS & MACHINERY and
DARYL A. REPOKIS,

UNPUBLISHED
September 25, 2003

Plaintiffs/Crossdefendants-
Appellees,

v

No. 238822
Wayne Circuit Court
LC No. 00-018871-CK

NORTHERN MACHINERY, INC., and
FRANCIS A. BLAKE,

Defendants/Counterplaintiffs-
Appellants,

and

STARK REAGAN & FINNERTY, P.C.,

Intervening Appellee.

Before: Donofrio, P.J., and Bandstra and O'Connell, JJ.

PER CURIAM.

Defendants appeal as of right a judgment entered in favor of plaintiffs. We reverse and remand.

While enforcing a settlement agreement disposing of “all claims, crossclaims, [or other] disputes” between plaintiffs and defendants, the trial court found that defendants breached the agreement by paying the first \$100,000 owed under the agreement to the client trust account of plaintiffs’ law firm, rather than directly to plaintiffs. Based on this finding, the trial court entered judgment against defendants in the full amount of the settlement agreement, even though the agreement entered into by the parties provided defendants 112 weeks to pay the remainder of the \$900,000 settlement.

Defendants’ sole argument on appeal is that the trial court erred in finding that they were in breach of the settlement agreement because they failed to pay the \$100,000 directly to plaintiffs. More specifically, defendants contend that they fully complied with the settlement agreement by paying the \$100,000 into plaintiffs’ counsel’s law firm’s client trust account because the parties mutually agreed on the record that the money would be kept in that account

until execution of the final global settlement agreement. This Court reviews the findings of fact of a trial court under the clearly erroneous standard. *Gumma v D & T Construction Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed.” *Id.* By contrast, this Court reviews conclusions of law de novo. *Omnicom of Michigan v Giannetti Investment Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997).

A settlement agreement is binding when the parties articulate its terms on the record in open court, even if it is not reduced to a final judgment. *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999); see also MCR 2.507(H).¹ “‘An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts.’” *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 484; 637 NW2d 232 (2001), quoting *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). Under usual contract principles, a party is bound by a settlement agreement absent a showing of mistake, fraud, or unconscionable advantage. *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998). The primary goal of contract interpretation is to honor the intent of the parties. *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 132; 602 NW2d 390 (1999). Where the terms of the agreement are unambiguous, they are construed as a matter of law; but where the meaning is unclear or reasonably susceptible to more than one meaning, interpretation becomes a question of fact, and the court may consider extrinsic evidence to determine the intent of the parties. *Id.*; *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998).

The record indicates that the trial court based its finding that defendants were in breach of the settlement agreement on the language of Paragraph 2 of the settlement agreement, which was prepared and signed by counsel for both sides on August 10, 2001. Paragraph 2 provides in its entirety:

Total payment Defendants pay Plaintiffs \$900,000:

- A. \$100,000 by 8/28/01;
- B. Additional \$400,000 within 60 weeks of 8/10/01;
- C. Additional \$400,000 within 52 weeks of payment (B).

¹ MCR 2.507(H) provides:

An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

Based on the plain language of Paragraph 2A, the trial court concluded that defendants were required to pay \$100,000 directly to plaintiffs by August 28, 2001. However, as defendants apparently attempted to explain to the trial court, the terms of the August 10th settlement agreement were placed on the record at a settlement hearing held in Oakland Circuit Court, wherein defendants had filed a related action, on August 28, 2001. We note that it was plaintiffs' counsel that explicitly stated the basic terms of the settlement agreement on the record. In explaining the parties' agreement regarding Paragraph 2A, plaintiffs' counsel clearly stated that the parties had agreed that the first \$100,000 of the \$900,000 owed under the settlement agreement would be paid by defendants by the close of business into his firm's client trust account, to be held in escrow pending execution of the final settlement agreement. Authorized representatives for both sides testified unequivocally that they were in agreement with the settlement, as placed on the record, and were aware that the agreement was binding. Because the parties expressly addressed on the record the issue of to whom or where defendants were to make the \$100,000 payment, we find that plaintiffs' counsel's representation to the trial court, that defendants breached the terms of the agreement by suddenly and unilaterally deciding that the money had to be put into escrow until execution of a final agreement, was misleading and contrary to the parties' agreement. The terms of the agreement articulated in open court indicate that it was the intent of the parties that the August 28, 2001 payment in the amount of \$100,000 be placed into plaintiffs' law firm's client trust account until a final global settlement agreement was executed.

Thus, although the language of the August 10th settlement agreement, by itself, could be considered evidence supporting the trial court's conclusion that defendants were required to make payment directly to plaintiffs, a review of the entire record leaves us with the definite and firm conviction that the trial court committed a mistake in concluding that defendants were in breach of the agreement for failing to do so. *Gumma, supra*. The trial court clearly erred in entering a judgment against defendants based on its finding that defendants breached the terms of the settlement agreement by failing to pay the \$100,000 directly to plaintiffs, and accordingly, we reverse the trial court's judgment.

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Richard A. Bandstra
/s/ Peter D. O'Connell